



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2424

Introduced 2/17/2015, by Rep. Kenneth Dunkin

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-102
820 ILCS 175/12

from Ch. 68, par. 2-102

Amends the Illinois Human Rights Act. Provides that it is a human rights violation for a third party client, as that term is defined by the Day and Temporary Labor Services Act, to fail to investigate a staffing agency's hiring practices if the third party client has reason to believe that the staffing agency is engaging in any discrimination in the hiring and assigning of day laborers. Amends the Day and Temporary Labor Services Act. Provides that a day and temporary labor service agency shall collect, from each person seeking work as a day or temporary laborer, demographic information on a contact form which allows the person to self-identify his or her race and gender. Provides that the collected information shall be maintained separately from any personnel files used to make job assignments. Provides that the day and temporary labor service agency shall submit the information to the Department of Labor on an annual basis. Provides that the Department shall use the data to submit a yearly report to the General Assembly. Provides that the report shall detail the hiring practices of each branch office of the day and temporary labor service agency. Provides that an agent of a day and temporary labor service agency who submits to the Department false or altered data is guilty of a Class A misdemeanor.

LRB099 10091 HEP 30314 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Section 2-102 as follows:

6 (775 ILCS 5/2-102) (from Ch. 68, par. 2-102)

7 Sec. 2-102. Civil Rights Violations - Employment. It is a
8 civil rights violation:

9 (A) Employers. For any employer to refuse to hire, to
10 segregate, or to act with respect to recruitment, hiring,
11 promotion, renewal of employment, selection for training or
12 apprenticeship, discharge, discipline, tenure or terms,
13 privileges or conditions of employment on the basis of unlawful
14 discrimination or citizenship status.

15 (A-5) Language. For an employer to impose a restriction
16 that has the effect of prohibiting a language from being spoken
17 by an employee in communications that are unrelated to the
18 employee's duties.

19 For the purposes of this subdivision (A-5), "language"
20 means a person's native tongue, such as Polish, Spanish, or
21 Chinese. "Language" does not include such things as slang,
22 jargon, profanity, or vulgarity.

23 (B) Employment Agency. For any employment agency to fail or

1 refuse to classify properly, accept applications and register
2 for employment referral or apprenticeship referral, refer for
3 employment, or refer for apprenticeship on the basis of
4 unlawful discrimination or citizenship status or to accept from
5 any person any job order, requisition or request for referral
6 of applicants for employment or apprenticeship which makes or
7 has the effect of making unlawful discrimination or
8 discrimination on the basis of citizenship status a condition
9 of referral.

10 (C) Labor Organization. For any labor organization to
11 limit, segregate or classify its membership, or to limit
12 employment opportunities, selection and training for
13 apprenticeship in any trade or craft, or otherwise to take, or
14 fail to take, any action which affects adversely any person's
15 status as an employee or as an applicant for employment or as
16 an apprentice, or as an applicant for apprenticeships, or
17 wages, tenure, hours of employment or apprenticeship
18 conditions on the basis of unlawful discrimination or
19 citizenship status.

20 (D) Sexual Harassment. For any employer, employee, agent of
21 any employer, employment agency or labor organization to engage
22 in sexual harassment; provided, that an employer shall be
23 responsible for sexual harassment of the employer's employees
24 by nonemployees or nonmanagerial and nonsupervisory employees
25 only if the employer becomes aware of the conduct and fails to
26 take reasonable corrective measures.

1 (E) Public Employers. For any public employer to refuse to
2 permit a public employee under its jurisdiction who takes time
3 off from work in order to practice his or her religious beliefs
4 to engage in work, during hours other than such employee's
5 regular working hours, consistent with the operational needs of
6 the employer and in order to compensate for work time lost for
7 such religious reasons. Any employee who elects such deferred
8 work shall be compensated at the wage rate which he or she
9 would have earned during the originally scheduled work period.
10 The employer may require that an employee who plans to take
11 time off from work in order to practice his or her religious
12 beliefs provide the employer with a notice of his or her
13 intention to be absent from work not exceeding 5 days prior to
14 the date of absence.

15 (F) Training and Apprenticeship Programs. For any
16 employer, employment agency or labor organization to
17 discriminate against a person on the basis of age in the
18 selection, referral for or conduct of apprenticeship or
19 training programs.

20 (G) Immigration-Related Practices.

21 (1) for an employer to request for purposes of
22 satisfying the requirements of Section 1324a(b) of Title 8
23 of the United States Code, as now or hereafter amended,
24 more or different documents than are required under such
25 Section or to refuse to honor documents tendered that on
26 their face reasonably appear to be genuine; or

1 (2) for an employer participating in the E-Verify
2 Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot
3 Programs for Employment Eligibility Confirmation (enacted
4 by PL 104-208, div. C title IV, subtitle A) to refuse to
5 hire, to segregate, or to act with respect to recruitment,
6 hiring, promotion, renewal of employment, selection for
7 training or apprenticeship, discharge, discipline, tenure
8 or terms, privileges or conditions of employment without
9 following the procedures under the E-Verify Program.

10 (H) (Blank).

11 (I) Pregnancy. For an employer to refuse to hire, to
12 segregate, or to act with respect to recruitment, hiring,
13 promotion, renewal of employment, selection for training or
14 apprenticeship, discharge, discipline, tenure or terms,
15 privileges or conditions of employment on the basis of
16 pregnancy, childbirth, or medical or common conditions related
17 to pregnancy or childbirth. Women affected by pregnancy,
18 childbirth, or medical or common conditions related to
19 pregnancy or childbirth shall be treated the same for all
20 employment-related purposes, including receipt of benefits
21 under fringe benefit programs, as other persons not so affected
22 but similar in their ability or inability to work, regardless
23 of the source of the inability to work or employment
24 classification or status.

25 (J) Pregnancy; reasonable accommodations.

26 (1) If after a job applicant or employee, including a

1 part-time, full-time, or probationary employee, requests a
2 reasonable accommodation, for an employer to not make
3 reasonable accommodations for any medical or common
4 condition of a job applicant or employee related to
5 pregnancy or childbirth, unless the employer can
6 demonstrate that the accommodation would impose an undue
7 hardship on the ordinary operation of the business of the
8 employer. The employer may request documentation from the
9 employee's health care provider concerning the need for the
10 requested reasonable accommodation or accommodations to
11 the same extent documentation is requested for conditions
12 related to disability if the employer's request for
13 documentation is job-related and consistent with business
14 necessity. The employer may require only the medical
15 justification for the requested accommodation or
16 accommodations, a description of the reasonable
17 accommodation or accommodations medically advisable, the
18 date the reasonable accommodation or accommodations became
19 medically advisable, and the probable duration of the
20 reasonable accommodation or accommodations. It is the duty
21 of the individual seeking a reasonable accommodation or
22 accommodations to submit to the employer any documentation
23 that is requested in accordance with this paragraph.
24 Notwithstanding the provisions of this paragraph, the
25 employer may require documentation by the employee's
26 health care provider to determine compliance with other

1 laws. The employee and employer shall engage in a timely,
2 good faith, and meaningful exchange to determine effective
3 reasonable accommodations.

4 (2) For an employer to deny employment opportunities or
5 benefits to or take adverse action against an otherwise
6 qualified job applicant or employee, including a
7 part-time, full-time, or probationary employee, if the
8 denial or adverse action is based on the need of the
9 employer to make reasonable accommodations to the known
10 medical or common conditions related to the pregnancy or
11 childbirth of the applicant or employee.

12 (3) For an employer to require a job applicant or
13 employee, including a part-time, full-time, or
14 probationary employee, affected by pregnancy, childbirth,
15 or medical or common conditions related to pregnancy or
16 childbirth to accept an accommodation when the applicant or
17 employee did not request an accommodation and the applicant
18 or employee chooses not to accept the employer's
19 accommodation.

20 (4) For an employer to require an employee, including a
21 part-time, full-time, or probationary employee, to take
22 leave under any leave law or policy of the employer if
23 another reasonable accommodation can be provided to the
24 known medical or common conditions related to the pregnancy
25 or childbirth of an employee. No employer shall fail or
26 refuse to reinstate the employee affected by pregnancy,

1 childbirth, or medical or common conditions related to
2 pregnancy or childbirth to her original job or to an
3 equivalent position with equivalent pay and accumulated
4 seniority, retirement, fringe benefits, and other
5 applicable service credits upon her signifying her intent
6 to return or when her need for reasonable accommodation
7 ceases, unless the employer can demonstrate that the
8 accommodation would impose an undue hardship on the
9 ordinary operation of the business of the employer.

10 For the purposes of this subdivision (J), "reasonable
11 accommodations" means reasonable modifications or adjustments
12 to the job application process or work environment, or to the
13 manner or circumstances under which the position desired or
14 held is customarily performed, that enable an applicant or
15 employee affected by pregnancy, childbirth, or medical or
16 common conditions related to pregnancy or childbirth to be
17 considered for the position the applicant desires or to perform
18 the essential functions of that position, and may include, but
19 is not limited to: more frequent or longer bathroom breaks,
20 breaks for increased water intake, and breaks for periodic
21 rest; private non-bathroom space for expressing breast milk and
22 breastfeeding; seating; assistance with manual labor; light
23 duty; temporary transfer to a less strenuous or hazardous
24 position; the provision of an accessible worksite; acquisition
25 or modification of equipment; job restructuring; a part-time or
26 modified work schedule; appropriate adjustment or

1 modifications of examinations, training materials, or
2 policies; reassignment to a vacant position; time off to
3 recover from conditions related to childbirth; and leave
4 necessitated by pregnancy, childbirth, or medical or common
5 conditions resulting from pregnancy or childbirth.

6 For the purposes of this subdivision (J), "undue hardship"
7 means an action that is prohibitively expensive or disruptive
8 when considered in light of the following factors: (i) the
9 nature and cost of the accommodation needed; (ii) the overall
10 financial resources of the facility or facilities involved in
11 the provision of the reasonable accommodation, the number of
12 persons employed at the facility, the effect on expenses and
13 resources, or the impact otherwise of the accommodation upon
14 the operation of the facility; (iii) the overall financial
15 resources of the employer, the overall size of the business of
16 the employer with respect to the number of its employees, and
17 the number, type, and location of its facilities; and (iv) the
18 type of operation or operations of the employer, including the
19 composition, structure, and functions of the workforce of the
20 employer, the geographic separateness, administrative, or
21 fiscal relationship of the facility or facilities in question
22 to the employer. The employer has the burden of proving undue
23 hardship. The fact that the employer provides or would be
24 required to provide a similar accommodation to similarly
25 situated employees creates a rebuttable presumption that the
26 accommodation does not impose an undue hardship on the

1 employer.

2 No employer is required by this subdivision (J) to create
3 additional employment that the employer would not otherwise
4 have created, unless the employer does so or would do so for
5 other classes of employees who need accommodation. The employer
6 is not required to discharge any employee, transfer any
7 employee with more seniority, or promote any employee who is
8 not qualified to perform the job, unless the employer does so
9 or would do so to accommodate other classes of employees who
10 need it.

11 (K) Notice.

12 (1) For an employer to fail to post or keep posted in a
13 conspicuous location on the premises of the employer where
14 notices to employees are customarily posted, or fail to
15 include in any employee handbook information concerning an
16 employee's rights under this Article, a notice, to be
17 prepared or approved by the Department, summarizing the
18 requirements of this Article and information pertaining to
19 the filing of a charge, including the right to be free from
20 unlawful discrimination and the right to certain
21 reasonable accommodations. The Department shall make the
22 documents required under this paragraph available for
23 retrieval from the Department's website.

24 (2) Upon notification of a violation of paragraph (1)
25 of this subdivision (K), the Department may launch a
26 preliminary investigation. If the Department finds a

1 violation, the Department may issue a notice to show cause
2 giving the employer 30 days to correct the violation. If
3 the violation is not corrected, the Department may initiate
4 a charge of a civil rights violation.

5 (L) Day Laborers. For a third party client to fail to
6 investigate a day and temporary labor service agency's hiring
7 practices if the third party client has reason to believe that
8 the day and temporary labor service agency is engaging in any
9 discrimination in the hiring and assigning of day laborers. As
10 used in this subdivision (J), the terms "third party client"
11 and "day and temporary labor service agency" have the meanings
12 ascribed to them in Section 5 of the Day and Temporary Labor
13 Services Act.

14 (Source: P.A. 97-596, eff. 8-26-11; 98-212, eff. 8-9-13;
15 98-1050, eff. 1-1-15.)

16 Section 10. The Day and Temporary Labor Services Act is
17 amended by changing Section 12 as follows:

18 (820 ILCS 175/12)

19 Sec. 12. Recordkeeping.

20 (a) Whenever a day and temporary labor service agency sends
21 one or more persons to work as day or temporary laborers, the
22 day and temporary labor service agency shall keep the following
23 records relating to that transaction:

24 (1) the name, address and telephone number of each

1 third party client, including each worksite, to which day
2 or temporary laborers were sent by the agency and the date
3 of the transaction;

4 (2) for each day or temporary laborer: the name and
5 address, the specific location sent to work, the type of
6 work performed, the number of hours worked, the hourly rate
7 of pay and the date sent. The term "hours worked" has the
8 meaning ascribed to that term in 56 Ill. Adm. Code 210.110
9 and in accordance with all applicable rules or court
10 interpretations under 56 Ill. Adm. Code 210.110. The third
11 party client shall be required to remit all information
12 required under this subsection to the day and temporary
13 labor service agency no later than 7 days following the
14 last day of the work week worked by the day or temporary
15 laborer. Failure of a third party client to remit such
16 information to a day and temporary labor service agency
17 shall not be a defense to the recordkeeping requirement of
18 this Section;

19 (3) the name and title of the individual or individuals
20 at each third party client's place of business responsible
21 for the transaction;

22 (4) any specific qualifications or attributes of a day
23 or temporary laborer, requested by each third party client;

24 (5) copies of all contracts, if any, with the third
25 party client and copies of all invoices for the third party
26 client;

1 (6) copies of all employment notices provided in
2 accordance with subsection (a) of Section 10;

3 (7) deductions to be made from each day or temporary
4 laborer's compensation made by either the third party
5 client or by the day and temporary labor service agency for
6 the day or temporary laborer's transportation, food,
7 equipment, withheld income tax, withheld social security
8 payments and every other deduction;

9 (8) verification of the actual cost of any equipment or
10 meal charged to a day or temporary laborer;

11 (9) the race and gender of each day or temporary
12 laborer sent by the day and temporary labor service agency,
13 as provided by the day or temporary laborer; and

14 (10) any additional information required by rules
15 issued by the Department.

16 (b) The day and temporary labor service agency shall
17 maintain all records under this Section for a period of 3 years
18 from their creation. The records shall be open to inspection by
19 the Department during normal business hours. Records described
20 in paragraphs (1), (2), (3), (6), (7), and (8) of subsection
21 (a) shall be available for review or copying by that day or
22 temporary laborer during normal business hours within 5 days
23 following a written request. In addition, a day and temporary
24 labor service agency shall make records related to the number
25 of hours billed to a third party client for that individual day
26 or temporary laborer's hours of work available for review or

1 copying during normal business hours within 5 days following a
2 written request. The day and temporary labor service agency
3 shall make forms, in duplicate, for such requests available to
4 day or temporary laborers at the dispatch office. The day or
5 temporary laborer shall be given a copy of the request form. It
6 is a violation of this Section to make any false, inaccurate or
7 incomplete entry into any record required by this Section, or
8 to delete required information from any such record. Failure by
9 the third party client to remit time records to the day and
10 temporary labor service agency as provided in paragraph (a)(2)
11 shall constitute a notice violation by a third party client
12 under Section 95 of this Act unless the third party client has
13 been precluded from submitting such time records for reasons
14 beyond its control. A failure by the third party client to
15 provide time records in accordance with this subsection (b)
16 shall not be a notice violation and shall not be the basis for
17 a suit or other action under Section 95 of this Act against the
18 day and temporary labor service agency.

19 (c) The day and temporary labor service agency shall
20 collect, from each person seeking work as a day or temporary
21 laborer, demographic information on a contact form which allows
22 the person to self-identify his or her race and gender. This
23 information shall be maintained separately from any personnel
24 files used to make job assignments. The day and temporary labor
25 service agency shall submit the information gathered under this
26 subsection (c) to the Department on an annual basis. The

1 Department shall use the data submitted to it under this
2 Section to submit a yearly report to the General Assembly. The
3 report submitted by the Department shall detail the hiring
4 practices of each branch office of the day and temporary labor
5 service agency. An agent of a day and temporary labor service
6 agency who submits to the Department false or altered data
7 under this subsection (c) is guilty of a Class A misdemeanor.

8 (Source: P.A. 94-511, eff. 1-1-06; 95-499, eff. 8-28-07.)